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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 54/2103*,**,***

Communication submitted by:	E.W. (represented by counsel, Daniel Nørrung and Helge Nørrung)
Alleged victim:	The author
State party:	Denmark
Date of the communication:	7 June 2013 (initial submission)
References:	Transmitted to the State party on 13 June 2013 (not issued in document form)
Date of adoption of decision:	28 February 2017

* Adopted by the Committee at its sixty-sixth session (13 February-3 March 2017).

** The following members of the Committee participated in the examination of the present communication: Ayse Feride Acar, Gladys Acosta Vargas, Nicole Ameline, Magalys Arocha Dominguez, Gunnar Bergby, Marion Bethel, Louiza Chalal, Néla Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Ismat Jahan, Dalia Leinarte, Rosario Manalo, Lia Nadaraia, Theodora Nwankwo, Pramila Patten, Bandana Rana, Patricia Schulz and Aicha Vall Verges.

*** In accordance with rule 61 of the Committee's rules of procedure, Wenyan Song did not take part in the examination of the communication.

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1.1 The author of the communication is E.W., a Chinese national born in 1958, whose asylum application has been rejected in Denmark and who faces deportation to China. She claims that her deportation would constitute a violation by Denmark of articles 1, 2, 3, 5 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women. She is represented by counsel, Helge Nørrung. The Convention and the Optional Protocol thereto entered into force for Denmark on 21 May 1983 and 22 December 2000, respectively.

1.2 When registering the communication on 13 June 2013 and pursuant to article 5 (1) of the Optional Protocol and rule 63 of its rules of procedure, the Committee, acting through its Working Group on Communications under the Optional Protocol, requested the State party not to deport the author pending the consideration of her case.

Facts as submitted by the author

2.1 The author comes from a small village in Inner Mongolia, China. She married a member of the Tibetan minority[1] and they had a daughter. The author contends that they were discriminated against by the authorities because of her husband's ethnicity. In 1996, following an earthquake that destroyed their home, the author's husband complained to the local authorities regarding land rights. As a consequence, he was beaten by municipal officials. He travelled to a city to complain to the regional authorities and never returned. The local authorities informed the author that her husband had died. Subsequently, in 2007, she learned that her husband had in fact been held in detention and tortured for several years on account of his Tibetan origin and his activities in the Inner Mongolian People's Party.

2.2 Following her husband's departure, the author, an illiterate person, became fully dependent on the village leader for food, clothing and housing. From 1996 to 2007, she was raped, including gang-raped, on several occasions by public officials and village leaders and by police officers. She was threatened with beatings if she did not obey, several of her teeth were forcibly removed with pliers by the village leader and she was forced to live in very poor conditions, including by being left without clothes for days at some point. The author contends that she felt too helpless to leave her village or complain to the authorities, especially as she was being abused by the village leader himself. She chose not to move in with her older sister in another village, as she thought that her harassment would continue there as well. Instead, she sent her daughter to her sister. Her daughter then left China to study in Denmark, where she was granted a student visa on 21 July 2005.

2.3 In 2007, the author was told by a friend that her husband was still alive. She left her village to join him in an unspecified locality. Her friend's husband arranged for them to be issued with Chinese passports by bribing the authorities and concealing his Tibetan origins. On 9 October 2007, the author and her husband were issued Schengen visas at the Danish Embassy in Beijing in order for them to visit their daughter. They arrived in Denmark on 1 November 2007, and stayed there illegally after the expiration of their visa. The author explains that they did not apply for asylum as they were not aware of that possibility and were afraid of approaching the authorities out of fear of being returned to China.

[1] The husband was born in 1955 and he is from the Zang Tibetan minority.

2.4 On 1 August 2008, the author's husband applied for asylum after being arrested. On 20 August 2009, the Danish Refugee Board rejected his application. The author applied for asylum on 8 December 2011. She explains that she was unaware that both spouses should make separate applications as she believed that her husband's asylum proceedings also related to her.

2.5 The Danish Immigration Service attempted to give the author a "manifestly unfounded negative decision", finding that she clearly could not obtain asylum in Denmark. Such an outcome would have prevented her from appealing to the Danish Refugee Appeals Board. However, on 15 March 2012, the Danish Refugee Council[2] contested the procedure, stating, among other things, that dealing with the case under the accelerated procedure for evidently unfounded cases was not appropriate in the light of the seriousness of the allegations.

2.6 On 23 March 2012, the Danish Immigration Service rejected the author's asylum application on the ground that having been raped by local officials was not "included in the asylum and protection definition in the Aliens Act article 7" and that she should have sought protection from the Chinese authorities. Nevertheless, it referred the matter to the Danish Refugee Appeals Board for a final decision. On 8 January 2013, the author's counsel requested the Danish Refugee Appeal Board to reopen her husband's case, to have it examined in conjunction with the author's asylum application and to conduct an oral hearing for both spouses. Her counsel invoked both the Convention and the International Covenant on Civil and Political Rights. He also requested that the decision of the Board be postponed, so that a medical examination of the couple could be carried by Amnesty International experts.

2.7 On 12 February 2013, the Danish Refugee Appeals Board rejected the request for the author's husband's case to be reopened, as well as the author's appeal. The author's husband was consequently deported to China on 14 February 2013. At that time, the author was living with her daughter, who is a legal resident in Denmark.

2.8 On 26 February 2013, the author was examined by an Amnesty International medical team, which found that her dental status was consistent with her testimony regarding her teeth being extracted and that she suffered from "psychological symptoms ... typical of torture survivors", compatible with post-traumatic stress disorder and associated with a major depressive disorder.[3] According to the medical report, "it can be concluded that the examination of [the author] is consistent with the description of torture and the objective findings".

2.9 The author has lived in hiding since her husband's deportation, as she fears that the rape, torture and degrading treatment that she previously experienced will resume if she is forcibly returned to China. She has not heard from her husband, and was informed that he never arrived in the town to which he was supposed to be

[2] The Danish Refugee Council is a private, independent humanitarian organization (non-governmental organization). Applications deemed manifestly unfounded by the Danish Immigration Service are sent to the Council for review.

[3] It was also stated in the medical report that the author suffers from chest and stomach pain, headaches, dizziness and impaired balance which causes her difficulties while walking, problems with her sexuality, anxiety, depression, a sleep disorder, nightmares reliving the trauma, guilt, lack of appetite, memory problems, difficulties concentrating and suicidal thoughts.

transferred from Beijing and where he was to meet a cousin, who was waiting for him.

2.10 The author explains that her communication has not been submitted to the European Court of Human Rights, and affirms that she has exhausted all domestic remedies, as a decision by the Danish Refugee Appeals Board is final.

Complaint

3.1 The author claims that she was a victim of serious gender-based violence for 11 years in China, before she was able to flee, and that, by deporting her to there, Denmark would breach its obligations under articles 1, 2, 3, 5 and 16 of the Convention, as there are substantial grounds to believe that she would be at risk of being subjected to further sexual abuse, or even that she could be killed. She also highlights that the State party did not conduct an oral hearing when the Danish Refugee Appeals Board examined her appeal, nor did it allow her enough time to present medical evidence in support of her claims.

3.2 The author argues that she would not be able to seek protection from the Chinese authorities. Complaining in China would prove to be ineffective or even dangerous for her, as she would be at risk of arbitrary imprisonment and torture for denouncing the wrongdoings of the local authorities, who kept her as a sexual slave for years. She contends that, on account of her husband's past complaints to the Chinese authorities, they were both persecuted and suffered for several years. In addition, as a lone illiterate woman, she would be too vulnerable to relocate to a different region in China.

State party's observations on admissibility and the merits

4.1 By a note verbale of 12 December 2013, the State party provided its observations on admissibility and the merits. The State party claims that the communication should be declared inadmissible, but, should the Committee find it admissible, returning the author to China will not constitute a violation of the Convention.

4.2 The State party recalls the facts of the case: the author and her spouse entered Denmark on 1 November 2007, on valid travel documents — Chinese passports and Schengen visas valid until 29 January 2008. They came to visit their daughter, who holds a residence permit for Denmark, on the basis of family reunification as she had married a Danish resident of Chinese origin. On 1 August 2008, the author's spouse was arrested when he was found working without a work or residence permit. The next day, he sought asylum. On 1 May 2009, the Danish Immigration Service refused to grant him asylum. On 20 August 2009, the Danish Refugee Appeals Board upheld that decision, emphasizing that the author's spouse had not applied for asylum until his arrest and that there was insufficient reason to conclude that he had been persecuted by the Chinese authorities, as he had left the country legally. On 8 December 2011, the author applied for asylum. The Service decided to recommend that her asylum application be processed under the manifestly ill-founded procedure provided for by section 53b (1) of the Aliens Act. On 23 March

2012, the Service refused to grant her asylum and, on 12 February 2013, the Board upheld this decision.[4]

4.3 Regarding the background information provided by the author, the Refugee Appeals Board accepted as fact that the family house had been destroyed in an earthquake and that, subsequently, the author and her husband had experienced conflicts with local authorities concerning help for reconstruction and land rights. However, it found it unlikely that the author had, as alleged, been subjected to sexual abuse for more than 10 years and prevented from taking any action to leave her village or seek protection from higher authorities, as in 2007 she could have departed to Denmark without hindrance. Accordingly, the Refugee Appeals Board found no reason to assume that, in China, she would be at real risk of persecution, as provided for by section 7 (1) of the Aliens Act, or of being subjected to situations falling within section 7 (2) of the Act.

4.4 The relevant evidence and information on the specific facts of the case and the background information have been assessed by the Refugee Appeals Board, in accordance with the requirements of the Aliens Act. According to section 7 (2) of the Aliens Act, a residence permit will be issued if the applicant is at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment in the event of return to his or her country of origin. The conditions for such a residence permit are met if the specific and individual factors render it probable that the asylum seeker runs a real risk of this type in the event of return.

4.5 The State party submits that decisions of the Refugee Appeals Board are based on the individual and specific circumstances of a case, as well as on information on the asylum seeker's country of origin. For this purpose, the Board has a memorandum describing in detail the legal protection for asylum seekers afforded by international law and a comprehensive collection of general background material on the situations in the countries from which the State party receives asylum seekers.

4.6 The State party points out that the communication should be declared inadmissible, as manifestly ill-founded and insufficiently substantiated, under article 4 (2) (c) of the Optional Protocol. In this connection, it observes that the author seeks to apply the State party's obligations under the Convention in an extraterritorial manner, concerning the treatment that she would suffer if she were returned to China. The State party notes that, according to the Committee's case law, the Convention applies when a woman to be returned will be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.[5]

4.7 In the State party's view, the author has failed to substantiate the claim that her removal from Denmark to China would expose her to a real, personal and foreseeable risk of serious forms of gender-based violence, and that the necessary and foreseeable consequence of her removal is that her rights under the Convention will be violated. The State party underlines that, even if the abuses invoked as her grounds for asylum, specifically associated with her village's leaders, were accepted as fact, there seems to be no basis for assuming that she would be at a real risk of

[4] A copy of the decision is provided.

[5] The State party refers to communication No. 33/2011, *M.N.N v. Denmark*, decision of inadmissibility adopted on 15 July 2013.

being subjected to similar abuses if she were returned to other parts of China. The State party therefore finds the author's communication to be manifestly ill-founded and thus inadmissible.

4.8 The State party considers that the author's statement about being held captive by a village leader from 1996 to 2007 and subjected to torture and sexual abuse is built on inconsistent and non-credible evidence, including the fact that, at her first interview in Denmark, on 14 December 2011, she said nothing about having allegedly been subjected to sexual abuse, but solely stated with regard to her grounds for asylum that she and her husband had had problems with public officials as a consequence of their application for compensation for their house, destroyed in an earthquake in 1996.

4.9 Moreover, during the asylum proceedings, the author put forward several other inconsistent arguments. The author stated that she had been detained by the village leader from 1996 to 2007, which diverges from her explanation about undergoing surgery in 2001 and 2002 and being able, when she decided in 2007, to leave the village and depart legally to Denmark via Beijing airport, with her spouse, establishing her identity by means of her genuine passport provided with a Schengen visa without any problem.

4.10 The State party indicates that the author's statement about refraining from complaining against the village leader to higher authorities because she was a single, illiterate woman does not appear likely. In this connection, the State party notes that rape is a crime in China, punished with a sentence of between three years' imprisonment and the death penalty, and that Chinese nationals whose rights or interests are infringed by public officials can lodge a complaint against such officials.[6] The State party thus finds it improbable that the author had allegedly been subjected to sexual abuse for more than 10 years without attempting to obtain help to complain to higher authorities if she lacked the skills required for that. The State party also observes that, according to her statement, the author received assistance in 2007 in requesting the issuance of a Schengen visa.

4.11 In the State party's view, the author did not apply for asylum until more than four years after her arrival in Denmark and more than two years after her spouse had been refused asylum weakened the credibility of her grounds for asylum. In that connection, it cannot be found — as stated by the author's counsel in the communication to the Committee — that the author believed that she was covered by her spouse's asylum application, as she did not mention that reason during the asylum proceedings and her spouse stated, throughout his asylum proceedings, that he did not know the whereabouts of his wife. It should be noted in this respect that the author's spouse applied for asylum only after his arrest by the Danish police, eight months after his arrival in Denmark. The State party consequently finds the communication insufficiently substantiated and thus inadmissible.

4.12 Regarding the examination carried out by Amnesty International on 22 February 2013 for signs of torture, the State party finds that it cannot lead to a review of the case. That the author's dental status is consistent with the alleged method of torture defined by her is not found in itself to render it probable that the

[6] The State party refers to the country report on human rights practices for 2012, published by the United States Department of State.

author has been subjected to the torture and persecution described justifying asylum. The State party observes, in that connection, that the author was not given a gynaecological examination in connection with the examination for signs of torture, because she refused to consent to it.

4.13 On the merits, the State party argues that, contrary to what is stated in the author's communication, the Danish Immigration Service — as it appears from its decision of 23 March 2013 — did not assess the credibility of the author's grounds for asylum. The Danish Immigration Service stated that, regardless of whether it can be found that the author was subjected to rape by local officials, this does not fall within the concept of asylum and protection set out in section 7 of the Aliens Act. Those acts are criminal acts committed by private individuals and one must therefore be referred to seeking the protection of higher authorities. The Service thus found that the rapists did not, when abusing the author, act in their capacity as representatives of authority, and observed that their acts were not sanctioned by higher authorities in China, as the author had not sought protection. The Service also noted that the author's contention that those authorities would not be willing to protect her was based only on her own assumption. Consequently, the State party agrees with the Refugee Appeals Board's assessment of the author's asylum case, which upholds the decision of the Service.

4.14 Finally, the State party requests the Committee to examine the admissibility of the communication separately from its merits and believes, on the basis of the above considerations, that the communication should be declared inadmissible under article 4 (2) (c) of the Optional Protocol, as the author has failed to substantiate sufficiently her claim that her return to China would expose her to a personal and foreseeable risk of serious forms of gender-based violence. Regarding the request for interim measures, the State party invited the Committee to review its decision.

Author's comments on the State party observations and the merits

5.1 On 10 March 2014, the author's counsel provided comments on the State party's observations. Regarding admissibility, he notes that, when the author applied for asylum in 2011, she was a relatively elderly woman who had reported gross physical abuse, including many instances of rape over a period of several years by her local village leaders in China. He emphasizes that the abuses reported are both probable and consistent with known facts, taking into account the general record of human rights violations at that time and place in China, and the fact that the author is illiterate and her husband was from Tibet placed her in a very vulnerable situation.

5.2 He submits that the author has consistently related the many years of abuse that she suffered from 1996 to 2007, until she succeeded in locating her husband and leaving China with him. Her explanation before the Danish Immigration Service of the constant abuses that she suffered is not contradictory to the version that she gave to the Danish Refugee Council. He submits that such differences can be explained by the fact that she had been more open with regard to relating the abuses when she talked to the female case handler at the Council. Moreover, he argues that the author did not complain to higher authorities in China about the sexual abuse because she had been told that her husband had been killed for having tried to complain about his harassment by local authorities on the ground of his Tibetan

origin and the failure to help him to rebuild their house after the earthquake. On this basis, the author's counsel claims that, at the time of the author's asylum application in 2011, the State party should have assessed that, if the author were returned to China, she would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.

5.3 He notes that, if the Danish Immigration Service doubted the author's account, it should have requested a medical examination in order to have a better basis for determining her credibility, before it made its decision with the following wording: "Regardless whether it is [grounded] that you have been subjected to rape by local authority persons, we do not find this to be included in the asylum and protection definition in the Aliens Act article 7."

5.4 He states that the author's credibility is also consistent with her husband's report, given three years earlier, in 2008. In his view, that report makes it evident that, by that time, the Danish authorities were aware of the presence of both spouses in Denmark; however, the author did not apply for asylum until 2011 because she thought that her case was being handled in connection with her husband's. The author's counsel recalls that he had been assigned to her case in December 2012, when her husband was already awaiting deportation in the Ellebæk detention centre, without having been sent for a medical examination, despite a consistent account of severe torture. For that reason, he sent an application to the Refugee Appeals Board requesting the re-examination of his case and that of the author, with the conduct of a medical examination and a chance for both spouses to appear at an oral hearing before the Refugee Appeals Board. However, the Board promptly rejected the request and deported the author's husband to China a few days after issuing its decision. The author's counsel highlights that the Danish authorities thereby forcibly separated two spouses who had consistently claimed to have been unwillingly separated for many years in China.

5.5 Referring to the author's medical examination, her counsel finds somewhat problematic the fact that the State party failed to refer to the conclusions of the Amnesty International medical team, but made only sparse comments on the physical symptoms.[7] However, he also argues that the wording of the Board's final decision, with phrases such as "even if the abuses invoked were to be accepted as facts in the case" or "regardless whether it is grounded that you have been subjected to rape" reveal doubts that cannot simply be ignored. He thus concludes that the State party might have come to a different conclusion had it authorized the medical examination at an earlier date, and also states that it should have given her an expert medical examination so as not to leave her without treatment for her severe psychological trauma. In the light of the above, he considers that the author's communication is not ill-founded.

5.6 He adds that the author has sufficiently substantiated her claims. He notes that the lack of information provided during her interview, on 14 December 2011, should not be used to her disadvantage as it must be noted that the interviewer was a policeman: it was a policeman who raped her in China and she had many

[7] The author's counsel points out that the medical examination was carried out in accordance with the principles described in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

psychological symptoms, as indicated in the Amnesty International medical report. Besides, as the State party is well aware, it is not the obligation of the police to take a full account of the applicant's background for seeking asylum at the registration interview. With regard to the author's ability to leave the village and complain to higher authorities, the author explained, after further questions from her counsel on the matter, that she was totally dependent on the village leader's mercy and that if she had left without his consent she would have been dragged back immediately; she was illiterate and could not write to anyone outside the village. Furthermore, she had been told that her husband had been killed when he tried to complain in the city, and feared that the same could happen to her, as most of her rapists were employed by the local authorities.

5.7 Lastly, in the author's counsel's opinion, the author has given a very detailed, consistent and, in view of her illiteracy and psychological condition, fully credible account of very severe gender-based atrocities. The communication is, therefore, substantiated.

5.8 With regard to the State party's observation on the merits, the author's counsel notes that the State party mainly reflects whether the credibility assessment of the author's account by the Immigration Service differs from that by the Danish Refugee Appeals Board. He argues that the decision of the Service is ambiguous, whereas the Board decision totally rejects the author's credibility on very weak grounds.

5.9 He reiterates that the author's return to China would constitute a violation of the Convention. He adds that the author and her daughter have had no news from the author's husband since his deportation in February 2013. After his flight to Beijing, he was supposed to fly to Baotou, where the author's nephew was to wait for him.[8] He had enough money and his family's telephone numbers, but never arrived in Baotou. The author's nephew even travelled to Beijing a month after the author's husband's arrival, but the airport police said that they knew nothing.

State party's additional observations

6.1 On 25 June 2014, the State party provided additional observations, reiterating its submission of 12 December 2013. It adds that the Committee should give considerable weight to the findings and decisions of the Danish Refugee Appeals Board, noting that it is better placed to assess the findings of fact in the author's communication.[9]

[8] He explains that Baotou is the nearest large city to the author's village and was where the daughter had been staying with the author's sister and her family since the author's husband left to complain to the higher authorities and all the abuses began.

[9] The State party refers to paragraph 7.3 of Human Rights Committee communication No. 2272/2013, *P.T. v Denmark*, views adopted on 1 April 2015: "The Committee recalls its jurisprudence that important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the organs of the States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists. In this connection, the Committee notes the assessment made by the State party authorities that the author did not face personal risk if returned to Sri Lanka, which is based on the lack of evidence of his affiliation with or activity for LTTE, and of indication that the Sri Lanka authorities or EPDP would have been looking for him".

6.2 The State party argues that the request before the Refugee Appeals Board to reopen the asylum proceedings in the case of the author's spouse cannot lead to a different assessment of the author's own case. Moreover, such a request was rejected on 12 February 2013, and the fact that the author did not succeed in reaching her spouse by telephone after his removal to China cannot either, in itself, lead to a different assessment of the case.

6.3 Finally, the State party reiterates that the communication is manifestly ill-founded and insufficiently substantiated and should be rejected as inadmissible under article 4 (2) (c) of the Optional Protocol. Likewise, the State party maintains that, should the Committee declare the communication admissible, returning the author to China will not constitute a violation of the Convention and again requests the Committee to review its request for interim measures.

Author's additional information

7.1 On 23 September 2014, the author's counsel submitted additional information. The author's daughter had informed her that her father (the author's husband) had died. The daughter had travelled to China for the funeral. On 1 June 2014, the daughter had received a telephone call from a cousin, who had informed her that her father's body was in a mortuary in Baotou, which had inquired whether the family was willing to pay for the disposal or cremation. He highlights that this was a terrible shock for the family, as they had not heard from the author's husband since his deportation on 14 February 2013.

7.2 The author's daughter emphasized that the family had been very worried about her father's well-being, and her cousin had even paid a bribe to the police in order to try to obtain some information as to what might have happened to him. However, the police had given no information.

7.3 From 2 to 16 June 2014, the author's daughter was in Baotou for the funeral.[10] The author could not accompany her because she fears for her life in China. According to the author, it was impossible to obtain any information on the cause of her husband's death; the relatives knew only that he had died in Baotou and had been brought to the mortuary by an unknown individual and that it was not possible to examine the body for possible further marks of torture. The author's counsel explains that the author's husband was probably arrested in Beijing and transferred by the police or security services to his home area in Baotou and kept confined there. He contends that this situation makes it clear that the author's arguments were well founded and substantiated, and that, if deported, she would face a personal and foreseeable risk.

Author's comments on the State party's additional observations

8.1 On 7 September 2015, the author's counsel submitted comments on the State party's additional observations of 25 June 2014. He first refers to his comments of 10 March 2014. With respect to the State party's submission that "the Refugee Appeals Board is better placed to assess the findings in the author's case", he

[10] The author's daughter provided a copy of her air ticket to China and two photographs allegedly taken at the funeral in which a portrait of her father is seen, next to lit candles, and a photograph of a grave marker.

reiterates that the decision of the Board was made without an oral hearing; thus, the numerous allegations of 11 years of sexual abuse could not be properly addressed.

8.2 In addition, he contends that the negative decision of 12 February 2013 was made in direct connection with the planned removal of the author's husband two days later, on 14 February 2013.[11] He emphasizes that the author is very frightened and is looking forward to the Committee's decision on the communication.

State party's further observations

9.1 On 14 July 2016, recalling its observations of 12 December 2013, the State party adds, regarding the author's submission of 7 September 2015, that its authorities have indeed taken into account the author's examination for signs of torture performed by Amnesty International on 22 February 2013, but that this was not found, in itself, to justify a different decision on the author's asylum application.[12]

9.2 With regard to the author's submission of 23 September 2014, the State party observes that the photographs allegedly taken at the funeral of her spouse cannot lead to a different assessment of the author's claims for asylum, as the reason for the death of the author's husband has not otherwise been further substantiated or proven in written form by a death certificate or similar supporting documentation. Moreover, although it might be considered to be fact that the author's husband is dead, this fact cannot lead to a different assessment either, because no information has been provided on the circumstances or context of his death, nor on the connection to or significance that this would have for the author's claim for asylum. The State party therefore finds that the author's comments in this regard are quite unsubstantiated and based on mere speculation.

9.3 The State party finds that, in its decision, the Refugee Appeals Board took into account all the relevant information and that the communication has not brought to light elements substantiating that the author risks persecution or abuse and that would justify granting her asylum. The State party emphasizes, in this respect, that the Committee must give considerable weight to the findings of fact made by the Board, as it cannot be found that there is an absence of evidence establishing that its decision was manifestly unreasonable, arbitrary or amounted to a manifest error or to a denial of justice.[13] The State party thus underlines that there is no basis for doubting the assessment made by the Refugee Appeals Board.

9.4 The State party reiterates that the communication should be declared inadmissible as manifestly ill-founded and insufficiently substantiated under

[11] Counsel states that, as no oral hearing was held by the Refugee Appeals Board in the author's case, the reference to communication No. 2272/2013 is not appropriate.

[12] The State party also provides statistics from the Danish immigration authorities, which show, inter alia, the recognition and rejection rates for asylum claims from the 10 largest national groups of asylum seekers decided by the Refugee Appeals Board between 2013 and 2015, with the success rate indicated.

[13] The State party draws attention to Human Rights Committee communications No. 2272/2013, *P.T. v. Denmark*, adopted on 1 April 2015, para. 7.3; No. 2393/2014, *K. v. Denmark*, adopted on 16 July 2015, paras. 7.4 and 7.5; No. 2186/2012, *Mr. X and Ms. X v. Denmark*, adopted on 22 October 2014, para. 7.5; No. 2426/2014, *N v. Denmark*, adopted on 23 July 2015, para. 6.6; and No. 2329/2014, *Z v. Denmark*, adopted on 15 July 2015, para. 7.4.

article 4 (2) (c) of the Optional Protocol. The State party further maintains that, should the Committee find the communication admissible, the author has failed to establish that there are substantial grounds for believing that returning her to China would constitute a violation of the Convention.

Author's additional comments

10.1 On 21 November 2016, the author's counsel provided additional comments. He states that the cause of death indicated on one certificate is "sudden death" and on another "various diseases".[14] He believes that the fact that the cause of death is vaguely described in two different ways shows that this is an attempt by the Chinese authorities to dissimulate the actual reason for the author's husband's death.

10.2 He emphasizes that the author's husband's death should be considered to be fact, based on the corroborating information on the matter and the documentation and photographs provided. He contends that the State party tries to question this, as has been done with other facts during the asylum proceedings, without conducting a conclusive investigation. In this regard, he specifically refers to the lack of a medical examination of the author by the Danish Immigration Service or the Refugee Appeals Board.

10.3 He claims that the death is now proven by the death certificates. He agrees that the death is not directly linked to the author's claims for asylum. He states, however, that the knowledge of the death should give rise to caution regarding the risk for the author, and lead to a re-evaluation of her asylum claim, this time with a proper oral hearing before the Danish Refugee Appeals Board.

10.4 Moreover, regarding the State party's observation that no information was provided on the circumstances or context of the author's husband's death, he indicates that all available information on the author's husband's whereabouts at the time is contained in the comments of 10 March 2014 and in the additional comments of 23 September 2014 regarding how the family members in Baotou were asked to collect the body at the mortuary.

10.5 He also refers to the State party's statement that the examination performed on 22 February 2013 by the Amnesty International team did not contain a gynaecological examination owing to the author's refusal to consent to it. In this connection, he argues that the author's psychological condition, which is fully substantiated in the report, makes the reasons for the author's refusal understandable.[15] He emphasizes that the Amnesty International report came after the negative decisions on the asylum cases. The timing of the handling of the asylum case did not allow for a medical examination of either spouse to be considered, because both final rejections by the Refugee Appeals Board were given on 12 February 2013, the author's husband was deported on 14 February 2013 and the examination of the author for signs of torture took place on 22 February 2013.

[14] He encloses the author's husband's death certificate and the certificate for annulment of household registration owing to death provided at the request of one of the daughters, in Chinese, with an English translation. The death certificate indicates "sudden death" as the cause of death.

[15] He refers to annex 5 to the initial communication, in which it is stated that the author meets the criteria for a major depressive disorder, typical of torture survivors.

10.6 In conclusion, he reports that the author is still not being treated for post-traumatic stress disorder. He argues that she is housed by her daughter, in private asylum housing, the access to non-emergency treatment is very limited, and she is very shy and stays inside most of the time. He adds that, during his most recent meeting with the author, she cried repeatedly and appeared to be in a very bad state.

Issues and proceedings before the Committee concerning admissibility

11.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4), it is required to do so before considering the merits of the communication.

11.2 The Committee notes, first, the author's claim that her deportation to China would constitute a violation by Denmark of articles 1, 2, 3, 5 and 16 of the Convention. The Committee also takes note of the State party's argument that the communication should be declared inadmissible under article 4 (2) (c) of the Optional Protocol on the ground of lack of substantiation and for being manifestly ill-founded.

11.3 With regard to substantiation, the Committee notes that the author has claimed that she fears being subjected to gender-based violence by her local village leader, or even being killed. She alleges that she would not be able to survive in other parts of China because she would be in a vulnerable situation as she is single, illiterate and ill and because the Chinese authorities will not protect her.

11.4 The Committee further notes that the Danish immigration authorities have duly examined the author's allegations but have concluded that the author has failed to sufficiently substantiate them. This relates in particular to her failure to seek protection from higher authorities for the alleged sexual abuse, continuing for more than 10 years, and the reasons for which she refrained from leaving her village with her daughter and taking up residence with her sister in another village. It further notes that, according to the Danish immigration authorities, the reasons advanced by the author to explain her failure to complain to higher authorities in China or to leave the village are inconsistent with the fact that she was later able to obtain, without any difficulty, a valid passport and a Schengen visa for herself and her husband, and managed to leave her village and China in 2007 and to travel to Denmark legally and without any obstacle whatsoever, with her husband. The Committee also notes the author's claims that her illiteracy prevented her from complaining and that, given what had happened to her husband before, she feared that, if she moved to her sister's village, local officials would harass both of them there.

11.5 The Committee takes note of the author's claims that the Danish immigration authorities failed to conduct a medical examination and an oral hearing before the Refugee Appeals Board as part of the author's asylum proceedings. The Committee also notes the State party's affirmation that there is no reason to question the comprehensive assessment made by the Board, stating that the author's explanation falls outside the framework for granting asylum; the medical examination by Amnesty International is not found to be a basis for reaching a different conclusion capable of changing the outcome in the asylum case. The Committee observes in this regard that nothing in the case file permits it to confirm that the State party's

evaluation is manifestly arbitrary or constitutes a denial of justice. Moreover, considering the information on file, the author has been afforded adequate opportunity for independent examination of her personal situation and specific claims. Neither a medical examination nor an oral hearing during the proceedings could have led to a different conclusion, as the author has not been able to provide relevant information in the relevant procedural instances to substantiate her claims. In addition, the Committee takes note of the fact that more than nine years have elapsed since the author's departure from China in October/November 2007 and that no information is provided whatsoever with a view to verifying the current situation of the alleged perpetrator, the local village leader. In the light of the above considerations, the Committee finds that there is no substantial information giving grounds for assuming that the author would be at risk of particular forms of gender-based violence if returned to China.

11.6 The Committee observes that the material on file does not permit it to conclude that the Danish immigration authorities have failed in any manner in their duties or acted in a biased or otherwise arbitrary manner in examining the author's asylum application. The additional information provided by the author regarding her husband's death cannot of itself, according to the Committee, substantiate her claims as to the individual risk that she would face in the event of being returned to China. The Committee therefore considers that the author has failed to substantiate her claims of violations of articles 1, 2, 3, 5 and 16 of the Convention.

11.7 Regarding the author's claims that the fact that she is a single and illiterate woman constitutes a supplementary factor of risk for her in China, the Committee points out, in the light of the information on file, that the author has a "network" in China, as she has several close relatives in Inner Mongolia, including her sister and her nephew. The Committee therefore finds that the author cannot be considered to be a particularly vulnerable single woman if she were to be returned to other parts of China, where she could be supported by her family.

11.8 In these circumstances, the Committee is of the view that the author's claim that her removal to China would expose her to a real personal and foreseeable risk of serious forms of gender-based violence is insufficiently substantiated for the purpose of admissibility. The Committee therefore considers that this communication is inadmissible under article 4 (2) (c) of the Optional Protocol.

12. The Committee therefore decides:

(a) That, in accordance with article 4 (2) (c) of the Optional Protocol, the communication is inadmissible;

(b) That this decision shall be communicated to the State party and to the author.